

RESOLUTION NO. 2010-16

A CAPITAL PROJECT RESOLUTION OF THE VILLAGE COUNCIL OF THE VILLAGE OF KEY BISCAYNE, FLORIDA, AWARDING THE CONSTRUCTION CONTRACT FOR CAPE FLORIDA ROADWAY RESURFACING IMPROVEMENTS TO H & J ASPHALT, INC. (THE “CONTRACTOR”); AUTHORIZING THE PROJECT AND EXPENDITURE OF FUNDS; PROVIDING FOR IMPLEMENTATION; PROVIDING FOR EFFECTIVE DATE.

WHEREAS, pursuant to a public bidding process, the Village of Key Biscayne (the “Village”) has sought bids for the construction of Cape Florida roadway resurfacing improvements in the Village (the “Project”); and

WHEREAS, the Village Manager has caused the six (6) bids which were submitted for the Project to be reviewed for the Village by the firm of Corzo Castella Carballo Thompson Salman, P.A. (“C3TS”); and

WHEREAS, C3TS has reviewed the bids and has recommended that the Project be awarded to the lowest, responsible, responsive bidder, to wit: H & J Asphalt, Inc. (the “Contractor”) in the amount of One Hundred Eighty Two Thousand Nine Hundred and Sixty and 40/100 Dollars (\$182,960.40); and

WHEREAS, the Village Council finds that it is in the best interest of the Village to proceed as indicated in this Resolution.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE VILLAGE OF KEY BISCAYNE, FLORIDA, AS FOLLOWS:

Section 1. Recitals Adopted. That each of the recitals stated above is hereby adopted and confirmed.

Section 2. Capital Project Authorizing Resolution. That pursuant to Village Charter Section 3.07(b), this Resolution shall constitute a Capital Project Authorizing Resolution. The Capital Project is the implementation of the above described Project at a cost not to exceed One Hundred Eighty Two Thousand Nine Hundred and Sixty and 40/100 Dollars (\$182,960.40).

Section 3. Project Authorized; Authorization of Expenditure.

A. That the Project is hereby authorized. The Project is further described in the Project's engineering plans, a copy of which are on file with the Village Clerk.

B. That the Village Council hereby authorizes the Village Manager to expend funds for the completion of the Project for a cost which is consistent with this Resolution, to be funded from the funding source which is identified in the Village Manager's memorandum which accompanies this Resolution.

C. That the Village Manager is hereby authorized to execute the necessary agreements, purchase orders, and related Project documents, once approved by the Village Attorney as to form and legal sufficiency.

Section 4. Implementation. That the Village Manager is authorized to take any action which is necessary to implement the Project and the purposes of this Resolution.

Section 5. Effective Date. That this Resolution shall be effective immediately upon adoption hereof.

PASSED AND ADOPTED this 27th day of April, 2010.



MAYOR ROBERT L. VERNON

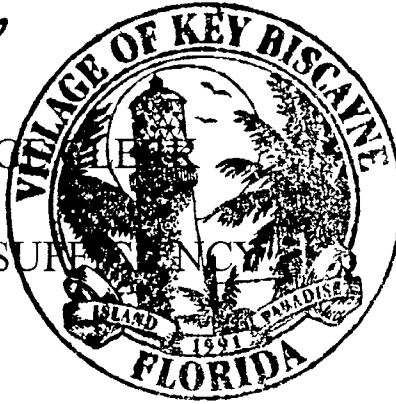
ATTEST:



CONCHITA H. ALVAREZ, MMC, VILLAGE ATTORNEY

APPROVED AS TO FORM AND LEGAL SUFFICIENCY


VILLAGE ATTORNEY





V I L L A G E O F K E Y B I S C A Y N E

Office of the Village Manager

MEMORANDUM

Village Council

Robert L. Vernon, *Mayor*

Enrique Garcia, *Vice Mayor*

Michael W. Davey

Robert Gusman

Michael E. Kelly

Jorge E. Mendia

Thomas Thornton

DATE: April 27, 2010

TO: Honorable Mayor and Members of the Village Council

FROM: Genaro "Chip" Iglesias, Village Manager

Village Manager

Genaro "Chip" Iglesias

RE: Award of Cape Florida Roadway Resurfacing Improvements to H&J Asphalt, Inc.

RECOMMENDATION

It is recommended that the Village Council award the construction contract for the Cape Florida Roadway Resurfacing Improvements to H & J Asphalt, Inc.

BACKGROUND

Notice of Bid Invitation was published on Thursday, March 18, 2010. A mandatory pre-bid conference was held on Wednesday April 7, 2010. Six bids were received and opened on Monday April 19, 2010, two should be considered as non-responsive. The references, sub-contractors, licenses and registrations were checked for all the bidders. The lowest responsible responsive bidder was H & J Asphalt, Inc., with a bid amount of \$182,960.40. This project is funded by the Capital Improvement Plan "CIP" and the estimated amount of \$208,242.

CONTRACT FOR CONSTRUCTION

THIS IS A CONTRACT, by and between THE VILLAGE OF KEY BISCAYNE, FLORIDA, a municipal corporation of the State of Florida, (hereinafter referred to as "Village"), and H & J Asphalt, Inc., a Florida corporation, (hereinafter referred to as "Contractor".)

W I T N E S S E T H, that Contractor and Village, for the considerations hereinafter named, agree as follows:

ARTICLE 1

SCOPE OF WORK

- 1.1 Contractor hereby agrees to furnish all of the labor, materials, equipment, services and incidentals necessary to perform all of the Work described in the Contract Documents including Plans, Specifications and Addenda thereto for the following Project:

CAPE FLORIDA ROADWAY RESURFACING IMPROVEMENTS

as described in the Plans prepared by CORZO CASTELLA CARBALLO THOMPSON SALMAN, P.A. ("C3TS") (the "Village's Project Engineer").

ARTICLE 2

CONTRACT TIME

- 2.1 Contractor shall be instructed to commence the Work by written instructions in the form of a Notice to Proceed issued by the Village Manager. The Notice to Proceed will not be issued until Contractor's submission to Village of all required documents and after execution of this Contract.

2.2 Time is of the essence throughout this Contract. The Contractor shall prosecute the work with faithfulness and diligence and the Base Bid Work shall be substantially completed within Sixty (60) calendar days from the date specified in the Notice to Proceed. The Work shall be completed and ready for final payment in accordance with Article 3 within sixty (30) calendar days from the date certified by Village's Project Engineer as the date of Substantial Completion.

- 2.3 Upon failure of Contractor to substantially complete the Contract within the specified period of time, Contractor shall pay to Village the sum of Five Hundred Dollars (\$500.00) for each calendar day after the time specified in Section 2.2 above for Substantial Completion. After Substantial Completion, should Contractor fail to complete the remaining Work within the time specified in Section 2.2 above for completion and readiness for final payment, Contractor shall pay to Village the sum of Two Hundred and Fifty Dollars (\$250.00) for each calendar day after the time specified in Section 2.2 for completion and readiness for final payment. These amounts are not penalties but are liquidated damages to Village for its inability to obtain full beneficial occupancy and use of the Project. Liquidated damages are hereby fixed and agreed upon between the parties, recognizing the impossibility of precisely ascertaining the amount of damages that will be sustained by Village as a consequence of such delay, and both parties desiring to obviate any question or dispute concerning the amount of said damages and the cost and effect of the failure of Contractor to complete the Contract on time. The above-stated liquidated damages shall apply separately to each phase of the Project for which a time for substantial and/or final completion is given.
- 2.4 Village is authorized to deduct the liquidated damages from monies due to Contractor for the Work under this Contract.

ARTICLE 3

CONTRACT PRICE

- 3.1 Village shall pay to Contractor for the performance of the Contract, the total lump sum of one hundred eighty-two thousand nine hundred sixty and 40/100 dollars (\$182,960.40) subject to the conditions, limitations and restrictions of Section 3.4. This price shall be full compensation for all costs, including overhead and profit, associated with completion of all the Work in full conformity with the requirements as stated or shown, or both, in the Plans and Specifications.
- 3.2 The sum set forth in Paragraph 3.1 shall constitute the Contract Price which shall not be modified except by any Change Order issued by Village or as otherwise specified herein.
- 3.3 The Contract Price may be adjusted by Village pursuant to Article 12 of the General Conditions.
- 3.4 Village and Contractor agree that this Contract shall be subject to the condition precedent that Village funds are available and budgeted for the accomplishment of the Work for this Project, and that the Village secures and obtains any necessary loans for the accomplishment of this Project pursuant to a borrowing enabling ordinance and any loan implementing resolution adopted by the Village Council,

and as described in the Village Council Resolution which awards and authorizes the execution of this Contract.

ARTICLE 4

CONTRACT DOCUMENTS

- 4.1 The Contract Documents which comprise the entire agreement between the Village and the Contractor concerning the Work consist of this Contract for Construction, the Drawings, Plans and Specifications, the Invitation for Bids, the Addenda, the Bid, Instructions to Bidders, the General and Supplementary Conditions, FHWA-1273, the Performance Bond and Payment Bond, Insurance Certificates, the Notice of Award, the Notice to Proceed, any Change Orders and any other Contract Documents, not specifically listed herein which shall be considered incorporated into and made a part of this Contract by this reference and shall govern this Project. Contractor is reminded and hereby recognizes that all Work under this contract must comply with applicable federal regulations. Any mandatory clauses which are required by such federal regulations shall be deemed to be incorporated herein immediately upon Village's written request.
- 4.2 This document incorporates and includes all prior negotiations, correspondence, conversations, agreements, or understandings applicable to the matters contained herein and the parties agree that there are no commitments, agreements, or understandings concerning the subject matter of these Contract Documents that are not contained herein. Accordingly it is agreed that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written.
- 4.3 The Contract Documents shall remain the property of the Village. The Contractor shall have the right to keep one record set of the Contract Documents upon completion of the Project; provided; however, that in no event shall the Contractor use, or permit to be used, any or all of such Contract Documents on other Projects without the Village's prior written authorization.

ARTICLE 5

WAIVER OF JURY TRIAL

Village and Contractor knowingly, irrevocably, voluntarily and intentionally waive any right either may have to a trial by jury in State and or Federal court proceedings in respect to any action, proceeding, lawsuit or counterclaim based upon the Contract for Construction, arising out of, under, or in connection with the Construction of the Work, or any course of conduct, course of dealing, statements or actions or inactions of any party.

ARTICLE 6

ASSIGNMENT

Neither party shall assign the Contract or any sub-contract in whole or in part without the written consent of the other, nor shall Contractor assign any monies due or to become due to it hereunder, without the previous written consent of the Village Manager.

ARTICLE 7

MISCELLANEOUS

7. Insurance Requirements:

7.1 Contractor shall provide and maintain in force until all the Work to be performed under this Contract has been completed and accepted by Village (or for such duration as is otherwise specified hereinafter), the insurance coverages set forth in the Contract Documents.

7.2 Village's Right To Terminate Contract

7.2.1 If Contractor fails to timely begin the Work, or fails to perform the Work with sufficient workers and equipment or with sufficient materials to insure the prompt completion of the Work, or shall perform the Work unsuitably, or cause it to be rejected as defective and unsuitable, or shall discontinue the prosecution of the Work pursuant to the accepted schedule or if the Contractor shall fail to perform any material term set forth in the Contract Documents or if Contractor shall become insolvent or be declared bankrupt, or commit any act of bankruptcy or insolvency, or shall make an assignment for the benefit of creditors, or from any other cause whatsoever shall not carry on the Work in an acceptable manner, Village may, upon seven (7) days written Notice of Termination, terminate the services of Contractor, exclude Contractor from the Project site and take the prosecution of the Work out of the hands of Contractor, and use any or all materials on the Project site which have been paid for by the Village, as may be suitable and acceptable and may finish the Work by whatever methods it may deem expedient. In such case Contractor shall not be entitled to receive any further payment until the Project is completed. All damages, costs and charges incurred by Village, together with the costs of completing the Project, shall be deducted from any monies due or which may become due to Contractor. In case the damages and expenses so incurred by Village shall exceed the unpaid balance, then Contractor shall be liable and shall pay to Village the amount of said excess.

7.3 **Contractor to Check Plans, Specifications and Data:**

Contractor shall verify all dimensions, quantities and details shown on the plans, specifications or other data received from Village's Project Engineer, and shall notify Village's Project Engineer in writing of all errors, omissions and discrepancies found therein within three (3) calendar days of discovery and Village's Project Engineer will promptly review the same. Any Work done after such discovery, but prior to written authorization of the Village's Project Engineer, will be done at the Contractor's sole risk.

7.4 **Contractor's Responsibility for Damages and Accidents**

7.4.1 Contractor shall accept full responsibility for the Work against all loss or damage of any nature sustained until final acceptance by Village, and shall promptly repair any damage done from any cause.

7.4.2 Contractor shall be responsible for all materials, equipment and supplies pertaining to the Project. In the event any such materials, equipment and supplies are lost, stolen, damaged or destroyed prior to final acceptance by Village, Contractor shall replace same without cost to Village.

7.5 **Defective Work/Guarantee**

7.5.1 Village shall have the authority to reject or disapprove Work which the Village finds to be defective. If required by the Village, Contractor shall promptly either correct all defective Work or remove such defective Work and replace it with nondefective Work. Contractor shall bear all direct, indirect and consequential costs of such removal or corrections including cost of testing laboratories and personnel.

7.5.2 Should Contractor fail or refuse to remove or correct any defective Work or to make any necessary repairs in accordance with the requirements of the Contract Documents within the time indicated in writing by Village's Project Consultant, Village shall have the authority to cause the defective Work to be removed or corrected, or make such repairs as may be necessary at Contractor's expense. Any expense incurred by Village in making such removals, corrections or repairs, shall be paid for out of any monies due or which may become due to Contractor. In the event of failure of Contractor to make all necessary repairs promptly and fully, Village may declare Contractor in default.

7.5.3 The Contractor shall unconditionally guarantee all materials and equipment furnished and Work performed for a period of one (1) year from the date of substantial completion. If, within one (1) year after the date of substantial completion, any of the Work is found to be defective or not in accordance with the Contract Documents, Contractor, after receipt of written notice from

Village, shall promptly correct such defective or nonconforming Work within the time specified by Village without cost to Village. Nothing contained herein shall be construed to establish a period of limitation with respect to any other obligation which Contractor might have under the Contract Documents including but not limited to any claim regarding latent defects.

7.5.4 Failure to reject any defective Work or material shall not in any way prevent later rejection when such defect is discovered.

7.6 **Legal Restrictions and Traffic Provisions:**

Contractor shall conform to and obey all applicable laws, regulations, or ordinances with regard to labor employed, hours of Work and Contractor's general operations. Contractor shall conduct its operations so as not to interfere with or close any thoroughfare, except as provided for in the Contract Documents, without the written consent of the proper authorities.

7.7 **Examination and retention of Contractor's Records**

7.7.1 The Village or any of their duly authorized representatives shall, until 3 years after final payment under this contract, have access to and the right to examine any of the Contractor's books, ledgers, documents, papers, or other records involving transactions related to this contract for the purpose of making audit, examination, excerpts, and transcriptions.

7.7.2 The Contractor agrees to include in first-tier subcontracts under this contract a clause substantially the same as subparagraph 7.7.1 above. "Subcontract," as used in this clause, excludes purchase orders not exceeding \$10,000.

7.7.3 The right to access and examination of records in subparagraph 7.7.1 shall continue until disposition of any mediation, claims, litigation or appeals.

7.8 **No Damages for Delay**

No claim for damages or any claim, other than for an extension of time shall be made or asserted against Village by reason of any delays. Contractor shall not be entitled to an increase in the Contract Price or payment or compensation of any kind from Village for direct, indirect, consequential, impact or other costs, expenses or damages, including but not limited to, costs of acceleration or inefficiency, arising because of delay, disruption, interference or hindrance from any cause whatsoever, whether such delay, disruption, interference or hindrance be reasonable or unreasonable, foreseeable or unforeseeable, or avoidable or unavoidable. Contractor shall be entitled only to extensions of the Contract Time as the sole and exclusive remedy for such resulting delay. Notwithstanding the above, and in accordance with the requirements of Article 12 of the General Conditions, the Contractor shall be

granted an extension of time and suspension of liquidated damages for any delay beyond the control of the Contractor. Should any delay, disruption, interference or hindrance be caused by the Village, for a continuous period or cumulative period of thirty (30) days, the Contractor may terminate the Contract upon seven days written notice to the Village.

7.9 **Public Entity Crimes Affidavit**

Contractor shall comply with Section 287.133, Florida Statutes, (Public Entity Crimes Statute) notification of which is hereby incorporated herein by reference, including execution of any required affidavit.

7.10 **Indemnification**

Contractor shall indemnify and hold harmless Village, Village's officers and employees and Village's Project Engineer and its officers and employees, from liabilities, damages, losses and costs, including, but not limited to, reasonable attorney's fees, to the extent caused by the negligence, recklessness or intentional wrongful conduct of Contractor and persons employed or utilized by Contractor in the performance of the Agreement.

7.11 **Capitalized Terms**

Capitalized terms shall have their plain meaning as indicated herein.

7.12 **Independent Contractor:**

The Contractor is an independent contractor under the Contract. Services provided by the Contractor shall be by employees of the Contractor and subject to supervision by the Contractor, and not as officers, employees, or agents of the Village. Personnel policies, tax responsibilities, social security and health insurance, employee benefits, purchasing policies and other similar administrative procedures, applicable to services rendered under the Contract shall be those of the Contractor.

7.13 **Payment to Sub-contractors**

Certification of Payment to Subcontractors: The term "subcontractor", as used herein, includes persons or firms furnishing materials or equipment incorporated into the work or stockpiled for which the Village made partial payment and firms working under equipment-rental agreements. The Contractor is required to pay all subcontractors for satisfactory performance of their Contracts before the Village will make a further progress (partial) payment. The Contractor shall also return all retainage withheld to the subcontractors within 30 days after the subcontractor's work is satisfactorily complete, as determined by the Village. Prior to receipt of any progress (partial) payment, the prime contractor shall certify that all subcontractors having an interest in the Contract were paid for satisfactory performance of their

Contracts and that the retainage is returned to subcontractors within 30 days after satisfactory completion of the subcontractor's work. Contractor shall provide this certification in the form designated by the Village.

The Village will not make any progress payments after the initial partial payment until the Contractor completes the Equal Opportunity monthly report, unless the Contractor demonstrates good cause for not making any required payment and furnishes written notification of any such good cause to both the Village and the affected subcontractors and suppliers.

Within 30 days of the Contractor's receipt of the final progress payment or any other payments thereafter, except the final payment, the Contractor shall pay all subcontractors and suppliers having an interest in the Contract for all work completed and materials furnished. The Village will honor an exception to the above when the Contractor demonstrates good cause for not making any required payment and furnishes suppliers within said 30-day period.

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement on the respective dates under each signature: VILLAGE OF KEY BISCAYNE, FLORIDA, signing by and through its Village Manager authorized to execute same by Council action on the 15 day of May, 2010, and May 15, 2010 signing by and through [Signature], duly authorized to execute same.

ATTEST:

[Signature]
Village Clerk

VILLAGE OF KEY BISCAYNE, FLORIDA

By: [Signature]

Village Manager

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY:

By: [Signature]

VILLAGE ATTORNEY

This 18 day of May, 2010.



CONTRACTOR MUST EXECUTE THIS CONTRACT AS INDICATED BELOW. USE CORPORATION FORMAT, AS APPLICABLE.

CONTRACTOR

ATTEST:



(Secretary)

(Corporate Seal)

This 19 day of April, 2010.

By: 

(Signature and Title)

Humberto Lorenzo, Jr. - President
(Type Name/Title signed above)